IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 530

UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS, UAW-CIO, *Appellant*,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD and KOHLER CO., A Wisconsin Corporation, *Appellees*.

On Appeal From the Supreme Court of Wisconsin

BRIEF FOR APPELLEE KOHLER CO.

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QUESTIONS PRESENTED

1. Whether state regulation of actual or threatened breaches of the peace is precluded because as an incidental effect of the state regulation rights guaranteed to employees by Sec. 7 of the National Labor Relations Act are protected and conduct which may violate Sec. 8(b)(1)(A) of that Act is prohibited?

2. Whether state regulation of violent and coercive conduct by labor unions and their agents, applied in the exercise of the state's police power, is precluded

because it overlaps to some extent federal regulation of the same conduct intended to enforce the guarantee of employee rights contained in Sec. 7 of the amended National Labor Relations Act?

3. Whether state regulation of violent and coercive conduct, a part of which is also subject to federal regulation as an unfair labor practice, is precluded where the legislative history of the federal regulation shows plainly that Congress intended to preserve state remedies against such conduct?

4. Whether the adoption by Congress of a partial remedy for violent and coercive conduct on the part of labor unions and their agents can be said to evince a Congressional intention to oust the states of the power to furnish a complete remedy against that type of conduct?

STATEMENT OF THE CASE

In June of 1952 appellant Union and its Local 833 were certified by the National Labor Relations Board as the collective bargaining representative of the production and maintenance employees of appellee Kohler Co. Thereafter, the Company and the Unions entered into a collective bargaining agreement which expired March 1, 1954 (R. 1).

When the parties were unable to agree upon the terms of a new contract the Union called a strike which commenced April 5, 1954 (R. 1). But this strike was not the ordinary concerted withholding of services and peaceful picketing of the employer's premises. From the outset the strike was conducted as an organized campaign of terror and violence intended to break the employer's resistance to the Unions' demands by force alone (R. 7-8).

Appellant admits, (Brief at p. 9) and the Supreme Court of Wisconsin found, that the conduct here involved is substantially similar to that involved in *Allen-Bradley Local 1111* v. *Wisconsin Board*, 315 U. S. 740.

Massed pickets, stationed at the various entrances to the Company's plant forcibly prevented non-striking employees from entering or leaving the employer's premises. Streets and highways were blocked; non-striking employees attempting to enter the plant through the picket line were taken into custody by the pickets and compelled to go to the Union's strike headquarters where they were held captive. The homes of non-striking employees were picketed, and they themselves and their families were threatened with physical injury if they persisted in their attempts to work despite the strike (R. 7-8).

As a result, the Company initiated on April 15, 1954 a proceeding before the Wisconsin Employment Relations Board looking toward the issuance of an order terminating this unlawful conduct. The two unions, their officers, members and agents were named as respondents in that proceeding together with certain named individual representatives of the two unions (R. 7).

After a hearing the state Board found as facts that the various respondents had committed the unlawful acts described above (R. 7-8), and it issued an order directing the respondents to cease and desist therefrom (R. 9).

The case then went to the Circuit Court for Sheboygan County, Wisconsin, on the Board's petition for enforcement of its order and the Unions' cross-

petition for review (R. 5-12). That Court rendered a written opinion and judgment (R. 13-19), rejecting the Unions' various contentions, dismissing their petition for review, and enforcing the order of the Board without modification of any kind (R. 17-19).

Cross appeals were taken to the Supreme Court of Wisconsin and that Court, on May 3, 1955, rendered its opinion and judgment affirming in all particulars the action of the State Circuit Court (R. 19-31). 269 Wis. 578, 70 N. W. 2d 191.

Throughout the proceedings before the State Board and the State Courts appellant union and its co-respondents have taken the position that the misconduct with which they were charged falls within the exclusive regulatory power of the National Labor Relations Board. The Wisconsin Supreme Court overruled this contention, holding in effect that this Court's decision in *Allen-Bradley Local 1111* v. *Wisconsin Board*, 315 U. S. 740, had confirmed the power of the states to deal with conduct of the type here in question and that the enactment of the 1947 amendments[1] to the National Labor Relations Act (29 U.S.C. § 151, et seq.) had not altered the situation.

SUMMARY OF ARGUMENT

1. Wisconsin here has prohibited conduct occurring in the course of a labor dispute which constitutes both actual and threatened breaches of the peace. In so doing Wisconsin has incidentally protected certain rights guaranteed to employees by Sec. 7 of the National Labor Relations Act, as amended [29 U.S.C.

[1] Labor-Management Relations Act, 1947, Title I; Act of June 23, 1947, Ch. 120, Title I, Sec. 101 et seq., 61 Stat. 136; 29 U.S.C. 151 et seq.

157], and has prohibited certain conduct which may violate Sec. 8(b)(1)(A) of that Act [29 U.S.C. 158(b)(1)(A)].

But Wisconsin's action goes far beyond the mere protection of rights guaranteed by Sec. 7 of the amended Federal Act and the prohibition of conduct which may violate Sec. 8(b)(1)(A) of that Act. In the exercise of its police power Wisconsin has prohibited the commission of acts of violence generally, the obstruction of its streets and highways, the blocking of ingress to and egress from the employer's plant, and has affirmatively regulated both the number of persons who may picket at any one time and the manner of their picketing. The National Labor Relations Board is not empowered to grant any of this relief.

We submit that since Wisconsin has acted primarily to preserve the peace, the fact that its action incidentally effectuates one aspect of federal labor policy does not divest the state of jurisdiction. *California* v. *Zook*, 336 U. S. 725; *United States* v. *Marigold*, 9 How. (U. S.) 560. Cf. *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202; *Rice* v. *Board of Trade*, 331 U. S. 247.

2. We have noted that Wisconsin's regulation of the violent and coercive conduct here involved goes far beyond what the National Labor Relations Board is empowered to do by Sec. 8(b)(1)(A) of the amended National Labor Relations Act. But Wisconsin has not attempted to regulate conduct which the federal Act protects. *Allen-Bradley Local 1111* v. *Wisconsin Board*, 315 U. S. 740.

In comparable circumstances this Court has uniformly upheld state regulation of conduct which is

neither prohibited nor protected by the National Labor Relations Act, as amended. *Allen-Bradley Local 1111 v. Wisconsin Board, supra; International Union v. Wisconsin Board*, 336 U. S. 245; *Algoma Plywood & Veneer Co. v. Wisconsin Board*, 336 U. S. 301. Cf. *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656. Thus, to the extent that Wisconsin's action reaches conduct which is unregulated by federal law, the State's regulation must be sustained.

3. The state, then, has jurisdiction over the subject matter of actual and threatened breaches of the peace in general. The National Labor Relations Board has regulatory authority over that narrow area of violent and coercive conduct which is encompassed within the terms that "It shall be an unfair labor practice for a labor organization or its agents—

> "(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Sec. 7 . . ." [Sec. 8(b)(1)(A), National Labor Relations Act, as amended; 29 U.S.C. 158(b)(1)(A)]

Thus,—as appellant apparently concedes (Brief at p. 29)—the state's authority in this area is substantially broader than is that of the National Labor Relations Board.

But, as a practical matter, there is no way that the state can exercise its power to preserve the peace and good order with respect to violence occurring in the course of a labor dispute without incidentally protecting certain rights guaranteed to employees by Sec. 7 of the federal Act and prohibiting conduct which may violate Sec. 8(b)(1)(A) of that Act. An illustration will demonstrate this; the right of the general

public to use the streets and highways within a state, and the right of the general public to be protected from mass breaches ... the peace necessarily overlaps and includes the right of employees to be free from coercion and restraint in the exercise of their right to enter and leave the employer's premises despite the existence of a strike,—a right guaranteed by Sec. 7 of the National Labor Relations Act, as amended.

Hence, while it must be admitted that the state remedy includes the relief which could have been obtained from the National Labor Relations Board, the converse is not true. The federal remedy could not include many aspects of the state remedy, and, specifically, it could not include any protection of the rights of the general public.

Thus, appellant's argument comes to this,—because a partial remedy for the conduct disclosed by this record is available from the National Labor Relations Board, the State is to be precluded from granting full relief,—and the general public is to be left unprotected from mass lawlessness.

We submit, on the other hand, that a construction of federal law which effectively paralyzes the only agency capable of dealing completely with mass lawlessness must be avoided. The state regulation here should be upheld despite some duplication of federal regulation.

4. The legislative history of Sec. 8(b)(1)(A) of the National Labor Relations Act, as amended, shows plainly that Congress recognized that the remedy provided by Sec. 8(b)(1)(A) would be ineffective as a means of actually stopping an episode of mass picketing, and intended to preserve state remedies against such action. Sec. 8(b)(1)(A) was enacted primarily

to throw the moral force of the federal government behind state enforcement of remedies against mass picketing and other acts of violence and coercion.

Effectuation of this Congressional purpose requires that the state action here be upheld even to the limited extent to which it duplicates the remedy made available by Sec. 8(b)(1)(A) of the federal Act.

ARGUMENT

I. The Applicable Provisions of the Wisconsin Employment Peace Act Constitute a Broad Prohibition of All Violence and Coercion Arising Out of Labor Disputes. Thus the State Regulation Has as Its Purpose the Preservation of Peace and Good Order During Labor Disputes. The Provisions of Sec. 8(b)(1)(A) of the National Labor Relations Act, on the Other Hand, are Narrowly Drawn so as to Preserve Only the Rights Guaranteed to Employees by Sec. 7 of That Act. For That Reason, the Federal Regulation Is Inadequate to Preserve Peace and Good Order and Should Not be Construed to Supersede the Duty of the State to Furnish That Protection to Its Citizens.

Appellant's contentions in this case raise questions striking at the most fundamental of all governmental powers,—the power of the state to preserve peace and good order and to protect its citizens from unlawful breaches of the peace.

Comparison of the federal and Wisconsin statutes shows that while Sec. 8(b)(1)(A) of the former is designed solely to protect employees against restraint or coercion by labor organizations and their agents, the provisions of the Wisconsin Act, upon which the order in issue is based, are designed to preserve peace and order in the community.

Sec. 8(b)(1)(A) of the National Labor Relations Act provides:

> "Sec. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 . . ."

Under that provision only labor organizations and their agents can commit unfair labor practices. Employees, union members, and other individuals are not subject to the prohibitions of Sec. 8(b)(1)(A) except where they engage in proscribed conduct as agents for a labor organization. *Sunset Line & Twine Company*, 79 NLRB 1487, 1507 (1948); *Perry Norvell Company*, 80 NLRB 225, 245 (1948).

Furthermore, the conduct interdicted by Sec. 8(b)(1)(A) constitutes an enjoinable unfair labor practice only when it restrains or coerces employees in the exercise of rights guaranteed by Section 7 of the federal Act. See *Local No. 67, IBT*, 107 NLRB 299, 304-305 (1953).

Sec. 111.06(2)(a) and (f) of the Wisconsin Employment Peace Act provides in pertinent part [Wisconsin Statutes, 1953, Sec. 111.06(2)(a) and (f)]: —

"(2) It shall be an unfair labor practice for an employee individually or in concert with others:

"(a) to coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employee or his family.

* * * * *

"(f) to hinder, or prevent by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of

public roads, streets, highways, railways, airports, or other ways of travel or conveyance."

Sec. 111.06(3) provides that "it shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of . . . employees, or in connection with or to influence the outcome of any controversy as to employment relations any act prohibited by subsections . . . (2) of this section."

The Wisconsin Act is significantly different from the federal Act in these respects:

(1) It reaches the conduct of employees, union members and strangers to a particular labor controversy, in addition to the activities of labor organizations and their agents.

(2) It prohibits various activities, proscribed by Sec. 111.06(2)(a) and (f) without regard to whether such activities restrain or coerce employees in the exercise of rights guaranteed by Sec. 111.04 (the counterpart of Sec. 7 of the federal Act).

The reason for the broad reach of the State law is found in Sec. 111.01(2), which, *inter alia,* states ". . . that whatever may be the rights of disputants with respect to each other in any controversy regarding employment relations, they should not be permitted, in the conduct of their controversy, to intrude directly into the primary rights of third parties to earn a livelihood, transact business, and engage in the ordinary affairs of life by any lawful means and free from molestation, interference, restraint or coercion."

In short, the Wisconsin law is directly and primarily concerned with preserving peace and order for the community during the course of a labor controversy.

It is a basic exercise of the State's police power, designed to enjoin mass picketing, threats, violence, obstruction of public ways, and other conduct which threatens breaches of the peace and would require extraordinary police measures to control.

The decree of the State Circuit Court enforcing the order of the State Board is cast in the following terms (R. 18-19):

"It is Further Ordered, Adjudged and Decreed that the respondents United Automobile Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations—UAW-CIO, Local Union Number 833, United Automobile Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations—UAW-CIO, their officers, members and agents:

"A. Immediately cease and desist from:

"1. Coercing and intimidating any person desiring to be employed by the Kohler Company in the enjoyment of his legal rights, intimidating his family, picketing his domicile, or injuring the person or property of such persons or his employe (sic).

"2. Hindering or preventing by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of lawful work or employment by any person desirous of being employed by the Kohler Company.

"3. Obstructing or interfering in any way with entrance to and egress from the premises of the Kohler Company.

"4. Obstructing or interfering with the free and uninterrupted use of public roads, streets, highways, railways or private drives leading to the premises of the Kohler Company.

"B. Take the following affirmative action:

"1. Limit the number of pickets around the Kohler Company premises to a total or (sic) not more than 200, with not more than 25 at any one entrance. Such pickets are to march single file and to, at all times, maintain a space at least 20 feet in width at each entrance to the Kohler Company premises over which pickets will not pass and on which persons either on foot or in conveyance may freely enter or leave the premises without interference."

A comparative analysis of the State decree in this case with the regulatory powers of the NLRB will demonstrate that the State statute is a police measure while Sec. 8(b)(1)(A) of the federal Act is not.

1. The State Court's decree runs against the International Union—the appellant here—, the Local Union, and their officers, members and agents.

Under Sec. 8(b)(1)(A) of the National Labor Relations Act the NLRB could have issued an order against the two unions and their officers and agents. But it could not have directed an order against the members of the unions, as such. See *Perry Norvell Co.*, 80 NLRB 225 (1948);[1] *Sunset Line & Twine Co.*, 79 NLRB 1487 (1948); *Gammino Construction Co.*, 97 NLRB 386 (1951); *Santa Ana Lumber Co.*, 87 NLRB 937 (1949); *Irwin-Lyons Lumber Co.*, 87 NLRB 54 (1949); *Schultz Refrigerator Service*, 87 NLRB 502 (1949).

[1] In *Perry Norvell*, the Board said (80 NLRB at p. 245): " . . . Section 8(b) of the amended Act designates as unfair labor practices certain acts by a labor organization *or its agents*. It is not directed toward such conduct by persons or employees in their *individual* capacity." (Italics are the Board's)

2. Paragraph A.1. of the State decree directs the various respondents to cease and desist from ". . . Coercing and intimidating any person desiring to be employed by the Kohler Company in the enjoyment of his legal rights, intimidating his family, picketing his domicile, or injuring the person or property of such persons or his employe."

Here there are important distinctions between the State decree and the remedy available under Sec. 8(b)(1)(A) of the NLRA.

a. The State decree prohibits interference with the enjoyment of the "legal rights" of persons desiring employment with the Company. Those "legal rights," of course, include the rights protected by Sec. 7 of the NLRA. But they include other rights also,—such as the right to seek employment by the Company, and the right to use the streets and sidewalks without threat of violence.

b. The State decree absolutely prohibits intimidation of families, domicile picketing, and injuring of persons or property without regard to coercion or restraint of employees in the exercise of their self-organizational rights. While it is plain that conduct of the type proscribed may often coerce and restrain employees in the exercise of their Sec. 7 rights, it is equally clear that there can be occasions on which it would not tend to interfere with the exercise of those rights, or, at least, where it would be extremely difficult to prove a connection between the misconduct and the exercise of a Sec. 7 right.

3. Paragraphs A.3. and A.4. of the State Court decree can be treated together. Both paragraphs are concerned solely with the use of streets, highways, and other public ways lying within the State of Wisconsin. Neither paragraph refers in any fashion to coercion or restraint of employees.

In this connection it is important to note that it was alleged by the Company in its complaint before the State Board (R. 3):

> "18. That business visitors of complainant have been prevented from passing through said picket line to enter the main office of the Company unless they first visited union headquarters and obtained a 'pass' signed by a union official."

The National Labor Relations Board has no regulatory authority over the use of streets and highways lying within the State of Wisconsin. Where the streets and highways are used to coerce or restrain employees in the exercise of rights guaranteed by Sec. 7, the Board can, of course, prohibit the continuance of the restraint and coercion of employees. See, for example, *Cory Corporation*, 84 NLRB 972 (1949); *Smith Cabinet Mfg. Co.*, 81 NLRB 886 (1949). But there is no remedy provided in the National Labor Relations Act for mere blocking of streets and highways, and entrance to and egress from an employer's premises. See, *Smith Cabinet Mfg. Co., supra*, at p. 888-889, where the NLRB refused to base an unfair labor practice finding upon proof that supervisors had been prevented from entering the plant because supervisors are excluded from the Act's definition of "employee."

Hence, had the NLRB found that the mass picketing here in question violated Sec. 8(b)(1)(A) of the

federal Act, it could only have directed the Unions and their agents to cease and desist from coercing or restraining *employees* in the exercise of their Sec. 7 rights. It has no power to protect the general public, including business visitors, supervisors and managerial personnel, from the coercive and intimidatory tactics revealed by this record.

The Board has itself recognized these limitations upon its powers. In *Cory Corporation, supra,* the Board said (84 NLRB 972, 977):

> ". . . Legislative History supports the view that, in enacting this section [Section 8(b)(1)(A)], Congress also intended to prohibit conduct characterized by the popular term 'mass picketing.' These particular words, however, do not appear in the statute itself, and no where in the reports or debates is 'mass picketing' explicitly defined. The term must, therefore, be read in the context of Section 8(b)(1)(A), which simply says that labor organizations shall not 'restrain' or 'coerce' employees. So read, it cannot be construed as contemplating that this Board shall affirmatively regulate the number of persons who may properly picket an establishment. That is primarily a matter for the local authorities. Our function, rather, as we see it, is limited to determining whether picketing as conducted in a given situation, whether or not accompanied by violence, 'restrained' or 'coerced' employees in the exercise of their rights guaranteed under the Act, and if so, to enjoin such conduct. In these circumstances, the number of pickets has relevance only as it tends to establish the potential or calculated restraining or coercive effect of massed pickets to bar non-striking employees from entering or leaving the plant . . ."

In short, the provisions of Sec. 8(b)(1)(A) of the federal Act are intended solely as a protection of the rights guaranteed to employees by Sec. 7 of that Act; section 111.06(2)(f) of the Wisconsin Employment Peace Act, on the other hand, is a general regulation of the State's streets and highways. The relief available under the provisions of the two statutes is in no way comparable.

4. Paragraph B.1. of the State Court decree affirmatively regulates both the number of persons who may picket the Company's premises at any one time and the manner in which the picketing shall be conducted.

No more need be said here than that this is precisely the type of regulation which the NLRB held was appropriate for the states in *Cory Corporation, supra.* It is the same power as is discussed in connection with Paragraphs A.3. and 4. of the State Court decree.

Analysis of the foregoing discussion will show, we believe, that the differences between the remedy secured from the State Board and that which might have been procured from the NLRB fall into two general groups: (a) those types of relief which the NLRB cannot duplicate, and (b) those types of relief which the NLRB is empowered to grant but which are subject to restrictions under the federal Act which are not present in the State law.

Taking up first the types of relief that the NLRB could not grant,—

(1) The NLRB could not prohibit union members as such from engaging in the conduct enjoined;

(2) The NLRB could not protect any "legal rights" other than those guaranteed by Section 7 of the National Labor Relations Act;

(3) The NLRB could not prohibit obstructing or interfering with ingress to, or egress from the Company's premises as such;

(4) The NLRB could not prohibit obstructing or interfering with the free use of streets, highways, and other public ways in Wisconsin;

(5) The NLRB could not protect the rights of anyone other than "employees" to use the streets and highways and to enter and leave the Company's plant;

(6) The NLRB could not limit the number of persons who may picket the Company's premises;

(7) The NLRB could not affirmatively prescribe the manner in which the picketing should be conducted.

On the other hand, the NLRB could grant the following types of relief which the State Board has granted—but subject in each instance to the conditions noted, none of which are applicable to the State Board;

(1) The NLRB could prohibit the coercion or restraint of any "employee" of the Kohler Company in the exercise of his right to work for the Company —if it could be shown that the persons responsible for the acts of coercion and restraint were acting as agents for the union;

(2) The NLRB could prohibit the intimidation of an "employee's" family, the picketing of his domicile, and the injuring of his person or property—if it could be shown that agents of the Union had previously engaged in similar conduct, and if it could be shown that the effect of the conduct was to coerce or restrain employees in the exercise of a right guaranteed by Sec. 7 of the federal Act;

(3) The NLRB could prohibit the use of mass pickets to prevent employees from entering or leaving the Company's premises—if, again, it could be shown that the Union was responsible for the mass picketing, and if it could be shown that the mass picketing prevented employees from entering or leaving the Company plant.[2]

To summarize,—we believe that the foregoing discussion demonstrates plainly that the State and Federal remedies for the unlawful conduct involved in this case are substantially dissimilar. The State remedy protects the public at large against violent and coercive conduct generally. The Federal remedy protects only "employees" and protects them only to the extent that a union or its agents have interfered with the exercise of rights guaranteed by Sec. 7 of the NLRA.

We believe that these basic distinctions between the State and Federal remedies impel the conclusion that the State injunction is an exercise of the State's police power intended to preserve peace and good order against a course of conduct during the existence

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[2] The Board has never held that mass picketing is per se coercive. "The question is whether or not it may reasonably be inferred from the manner of picketing that the conduct was calculated or tended to bar employees' 'ingress or egress.'" *H. N. Thayer Co.*, 99 NLRB 1122, 1130 (1952), Enforced, 213 F. 2d 748 (C.A. 1, 1955), cert. den. 348 U. S. 883. See also, *Cory Corporation*, 84 NLRB 972, 977 (1949); Smith Cabinet Mfg. Co., 81 NLRB 886 (1949).

To illustrate the type of order which the Board normally issues in cases involving mass picketing, violence and other acts of restraint or coercion, there are printed as Appendix A to this brief the orders of the Board in some of the cases referred to herein. A comparison of those orders with that of the State Board in this case will demonstrate very plainly the difference in the scope of the regulatory powers of the two Boards.

of a labor dispute which would require extraordinary police measures to control, while the Federal remedy is intended only to effectuate the guarantee of employee rights contained in Sec. 7 of the amended National Labor Relations Act.

This is exactly the conclusion reached by the Supreme Court of Wisconsin in *Allen-Bradley Local 1111* v. *Wisconsin Board,* 237 Wis. 164, 295 N. W. 791 (1941), approved by this Court in *Allen-Bradley Local 1111* v. *Wisconsin Board,* 315 U. S. 740, 749 (1942), and restated by the Wisconsin Supreme Court in this case. 269 Wis. 578, 70 N. W. 2d 191.

Thus, the basic question presented in this case is whether the State of Wisconsin is divested of its police power to protect its citizens against actual and threatened breaches of the peace, by enjoining conduct which would require extraordinary police measures to control, because the injunction issued incidentally may protect employees in the enjoyment of rights guaranteed by Sec. 7 of the federal Act.

We suggest this case falls squarely within the rule, which this Court has often recognized, that an "intention of Congress to exclude States from exerting their police power must be clearly manifested." *Napier* v. *Atlantic Coast Line R. Co.,* 272 U. S. 605, 611; *Kelly* v. *Washington,* 302 U. S. 1, 10; *Allen-Bradley Local 1111* v. *Wisconsin Board,* 315 U. S. 740, 749.

As we shall now show, neither Sec. 8(b)(1)(A) of the National Labor Relations Act, or the Act as a whole, nor its legislative history, even suggests—let alone "clearly manifests"—an intention of Congress to exclude the states from exercising their police power

to preserve peace and good order in the situation presented in this case. For purposes of clarity, we divide our discussion into two parts, taking up first the power of the State to regulate activities not touched by federal regulation and second, the power of the State to duplicate the federal remedy to the extent that duplication does exist.

II. Neither the Provisions of Sec. 8(b)(1)(A) of the National Labor Relations Act, Nor the Scheme of That Act as a Whole Suggests That Congress Intended to Oust State Regulation of Violent and Coercive Conduct Arising Out of a Labor Dispute Where the State Regulation Is Applied to Conduct Not Reached by the Federal Act

This Court has held on occasion that a federal regulatory scheme was so complete and pervasive "as to make reasonable the inference that Congress left no room for the State to supplement it." *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230; *Pennsylvania* v. *Nelson*, U. S. , 24 LW 4165, 4166, decided April 2, 1956.

Appellant's brief suggests that the course of violence and coercion which the State acted to prevent constitutes an integral and inseparable part of the labor relations between appellant and Kohler Company, and consequently cannot be divorced from the scheme which Congress has laid down in the National Labor Relations Act for the regulation of such labor relations.

But it is manifestly absurd to say that such conduct, deliberately threatening the peace and welfare of the community, may not be handled at the local level to preserve peace and order without disrupting the federal scheme for regulating labor relations between employers, employees and labor organizations. Nothing

in the federal Act indicates that Congress intended to extend its regulation over labor relations to the point where engaging in continuous violent and unlawful conduct disrupting the peace of the State may be prevented only by application of the limited power conferred upon the NLRB to prevent restraint or coercion of employees in their exercise of rights guaranteed by the Federal Act.

We have already shown that the Federal regulation of violent and coercive union conduct contained in Sec. 8(b)(1)(A) of the Amended National Labor Relations Act—far from being complete and pervasive—is notably incomplete and fragmentary. It leaves unregulated many types of violent and coercive conduct, its prohibitions apply only to the very limited class of unions and their agents, and its protection is extended only to safeguard the statutory rights of "employees".

Moreover, the situation is not one in which it can be argued that the failure of Congress to regulate more completely evinces an intention to immunize the unregulated area from all regulation. See, *Garner* v. *Teamsters Union*, 346 U. S. 485, 499-500. No one would contend, we think, that Congress intended in enacting Sec. 8(b)(1)(A) to create and protect a "right" to keep supervisors, business visitors, and other non-employees out of an employer's plant. Nor can it be said that Congress intended to create and protect a "right" in individual union members to engage in violent and coercive conduct. Even appellant has not made such a contention here.

In comparable circumstances this Court has invariably upheld State regulation even though applied in an area that is also subject to federal regulation

so long as the State regulation has reached matters not covered by the federal regulation and there has been no possibility of conflict between the two.

Thus, in *Kelly* v. *Washington*, 302 U. S. 1, state regulation of motor driven tugboats was upheld despite the existence of Federal statutes regulating the same subject matter. The Court's conclusion rested on the fact that the federal regulation in question was limited in scope and did not deal with the subject comprehensively.

Similarly, in *Savage* v. *Jones*, 225 U. S. 501, a state law requiring identification of the ingredients in foods for domestic animals was upheld even though the federal Food and Drug Act also regulated the branding of such foods transported in interstate commerce. Congress, it was held, had limited its prohibitions so as not to include that at which the state law aimed.

South Carolina State Highway Dept. v. *Barnwell Bros.*, 303 U. S. 177, approved state regulation of interstate motor carriers applied in an area not covered by the Federal Motor Carrier Act. *Mintz* v. *Baldwin*, 289 U. S. 346, permitted a state to enforce its own animal quarantine act despite the existence of the federal Cattle Contagious Diseases Act. *Reid* v. *Colorado*, 187 U. S. 137, was similar to *Mintz* v. *Baldwin, supra.*

Many additional cases could be cited but the principle is summarized in *Kelly* v. *Washington, supra.* There the Court said (302 U. S. at p. 10):

> "There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. The principle is

> thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.' "

See also, *Atchison, T. & S. F. R. Co.* v. *Railroad Commission*, 283 U. S. 380; *Maurer* v. *Hamilton*, 309 U. S. 598; *H. P. Welch Co.* v. *New Hampshire*, 306 U. S. 79; *Skiriotes* v. *Florida*, 313 U. S. 69.

The same rule has been applied in the labor field. State regulation applied to matters untouched by federal regulation has been held valid in *Allen-Bradley Local 1111* v. *Wisconsin Board*, 315 U. S. 740; *International Union* v. *Wisconsin Board*, 336 U. S. 245. Cf. *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U. S. 656.

Thus, to the extent that Wisconsin has afforded a remedy against conduct which Sec. 8(b)(1)(A) of the federal Act does not reach, it is clear that the State's action was permissible and should be upheld.

It may, however, be argued that, despite the limited applicability of Sec. 8(b)(1)(A) of the NLRA, the Act as a whole constitutes such a detailed scheme of regulation that State action must be excluded from the entire area of labor relations. Appellant seems, in fact, to verge on this argument when it suggests that the State could not proceed against the unlawful conduct here in question in the enforcement of the State's "labor policy." (Appellant's Brief at p. 29).

The short answer to this contention is that this Court has consistently refused to find that Congress has occupied the field of labor relations to the exclusion

of the states. On the contrary, the Court has said on several occasions that,

> "The National Labor Management Relations Act . . . leaves much to the states, though Congress has refrained from telling us how much. We must spell out from conflicting expressions of congressional will the area in which state action is still permissible." *Garner* v. *Teamsters Union*, 346 U. S. 485, 488.

And see, *Weber* v. *Anheuser-Busch*, 348 U. S. 468, 480-481; *Algoma Plywood & Veneer Co.* v. *Wisconsin Board*, 336 U. S. 301, 313.

Analysis of the internal structure of the amended National Labor Relations Act points to the same result.

Sec. 10 of that Act is devoted to the mechanics for the prevention of unfair labor practices. Two subsections of Sec. 10, subsections (j) and (l), authorize the Board to seek injunctions in the United States District Courts against the continuance of unfair labor practices. These injunctions can be obtained by the Board upon the issuance of an unfair labor practice complaint and prior to a hearing or the issuance of a cease and desist order.

Subsection (j) of Sec. 10 confers on the Board discretion to seek an injunction in any case in which it believes that action is justified. Sec. 10(l), on the other hand, is mandatory. It directs the Board to seek an injunction against certain enumerated unfair labor practices. Significantly, the unfair labor practices enumerated in Subsection (l) are those set out in Secs. 8(b)(4)(A), (B), and (C) of the Act—the so-called "secondary boycott" provisions. They do not include violations of Sec. 8(b)(1).

Certainly, it is not to be lightly assumed that Con-

gress was more concerned with the elimination of secondary boycotts than with the preservation of peace and good order at the local level. On the contrary, we think the natural inference to be drawn from the failure of Congress to require the Board to seek injunctions against union violence and coercion is that Congress intended that the States should continue to be primarily responsible for the preservation of the safety of the local community.

Accordingly, we conclude that neither Sec. 8(b)(1)(A) of the federal Act nor the Act as a whole embodies such a detailed proscription of unlawful conduct by unions, their agents or members, as to preclude the enforcement of state remedies against specific unlawful conduct which is not reached by the federal regulation.

The question remains whether the State regulation may be sustained to the extent that it duplicates the remedy available under Sec. 8(b)(1)(A) of the federal Act—that is, to the extent that the State decree undertakes to protect persons who are "employees" within the meaning of Sec. 2(3) of the NLRA[5] from coercion or restraint by a union or its

[5] Sec. 2(3) of the amended federal Act provides as follows:

"The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute, or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his house, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined."

agents in the exercise of rights guaranteed to "employees" by Sec. 7 of the NLRA.

We now turn to a consideration of that question.

III. THE LEGISLATIVE HISTORY OF SEC. 8(b)(1)(A) DEMONSTRATES CONCLUSIVELY THAT CONGRESS DID NOT INTEND TO OUST STATE REGULATION OF VIOLENT AND COERCIVE UNION CONDUCT EVEN WHERE THE STATE REGULATION DUPLICATES A REMEDY MADE AVAILABLE BY THE AMENDED NATIONAL LABOR RELATIONS ACT

At the outset we believe it is worthwhile to point out the wholly negative use which appellant makes of the legislative history of Sec. 8(b)(1)(A). Essentially appellant's argument is that this Court's prior decisions force a conclusion of federal preemption here. The legislative history is analyzed solely with a view to showing that it contains nothing absolutely irreconcilable with that conclusion. Thus, the whole basis of inquiry is shifted from a search for Congressional intent to a search for theoretical, legal symmetry.

To us, this approach reveals a fundamental weakness of appellant's case. In effect, appellant is attempting to persuade the Court that, in dealing with a problem of statutory construction, it should disregard the intent of Congress. The reason, however, for appellant's curious approach to the legislative history of Sec. 8(b)(1) is plain. As we will now show that legislative history is overwhelmingly to the effect that Congress intended to preserve state remedies with respect to union violence and coercion even where they duplicated the newly created federal remedy.

Sec. 8(b)(1) of the National Labor Relations Act, as amended, was one of the most controversial sections of the 1947 amendments to the Wagner Act. As the

Bill which ultimately became the Taft-Hartley Act was reported from the Senate Committee on Labor and Public Welfare, it contained no provision making it an unfair labor practice for a union to coerce or restrain employees in the exercise of rights guaranteed by Sec. 7. 1 Legislative History of the Labor Management Relations Act 1947, p. 441. In a statement of Supplemental Views attached to the Committee Report, however, a minority of the Committee, including Senator Taft, announced that they would seek to insert such a provision in the Bill by amendment on the Senate floor. Id: at p. 456. Summarizing their reasons for offering such an amendment, the Committee Minority stated (Id. at p. 456):

> "The Committee heard many instances of union coercion of employees and their families in the course of organizing campaigns; also direct interference and other violence. Some of these acts are illegal under state law, but we see no reason why they should not also constitute unfair labor practices to be investigated by the National Labor Relations Board and at least deprive the violators of any protection furnished by the Wagner Act . . ."

When the Bill (S. 1126) reached the floor, the proposed amendment was offered by Senator Ball of Minnesota for himself and Senators Byrd, George and Smith of New Jersey. 2 Legislative History of the Labor Management Relations Act of 1947, p. 1018. It provoked a prolonged debate in which the principal participants were Senators Ball and Taft in support of the amendment, and Senators Morse, Ives and Pepper in opposition.

During the course of this debate most of the principal participants on both sides indicated plainly that

the amendment was not intended to oust the states of jurisdiction over violent and coercive conduct. The amendment was viewed by all concerned as affording an alternative or supplementary remedy to any remedy already available under state law.

Thus, Senator Taft, in an exchange with Senator Pepper, made the following statement (Id. at p. 1031):

> "... There are plenty of methods of coercion short of actual physical violence. So that in this section there is no duplication whatever. But suppose there is duplication in extreme cases; suppose there is a threat of violence constituting violation of the law of the state. Why should it not be an unfair labor practice? It is on the part of the employer. If an employer proceeds to use violence, as employers once did, if they use the kind of goon-squad tactics labor unions are permitted to use—and they once did—if they threaten men with physical violence if they join a union, they are subject to be proceeded against for violating the National Labor Relations Act. There is no reason in the world why there should not be two remedies for an act of that kind."

At a later date, Senator Ball, addressing himself to the question of the need for the amendment, made the following remarks (Id. at p. 1220):

> "It is no wonder that local communities and their peace officers have been reluctant to vigorously enforce law when they saw the Federal Government was holding the unions exempt from any kind of Federal regulation. The only laws we have had restrain employers and not unions. So it may well be that many of the types of activities of unions which we are seeking to restrain somewhat by this mild amendment are the kind of activities which would be corrected by good local

law enforcement. But I think we shall encourage that kind of law enforcement if the Federal Government, acting through Congress, states clearly its position that individual employees are entitled to their right of self-organization free from coercion from any source, whether it be the employer, the union, or some outside source."

Opposing the Ball amendment, Senator Ives showed that he also understood that it would not affect existing state laws. The Senator said (Id. at p. 1021):

"Moreover, assuming that these proscribed acts involved violence and physical coercion, the provision is unnecessary because offenses of this type are punishable under state and local police law. In fact, the enactment of this provision would make unions and their agents liable twice for the same offense, once under state and once under Federal law. Employers run no such risk for interfering with their employees' rights."

With this statement Senator Morse expressed his agreement. Id. at p. 1196.

Senator Murray, one of the leaders of the opposition to the Taft-Hartley Act in the Senate,—though not a principal participant in the debate on the Ball amendment—had the same understanding of the effect of that amendment. Senator Murray inserted in the record a written analysis of the whole Bill, which included the following comment respecting the proposed Sec. 8(b)(1) (Id. at p. 1578):

"Comment: The proposal contained in Sec. 8 (b)(1) making it an unfair labor practice on the part of the unions and their agents to restrain or coerce employees in the exercise of rights guaranteed in Sec. 7 would lead to protracted litigation,

because of the difficulty in determining who are agents of a labor organization and what constitutes restraint and coercion within its meaning. Moreover, assuming that these proscribed acts involve violence and physical coercion, the provision is unnecessary because offenses of this type are punishable under state and local police laws. In fact, the enactment of this provision would make unions and their agents liable twice for the same offense, once under state and once under Federal law. Employers run no such double risk for interfering with their employees' rights . . ."

Probably the clearest statement of the Congressional purpose to preserve and supplement existing state remedies against mass picketing and other types of union coercive tactics was made by Senator Ball in a running discussion with Senator Ives. In the course of that discussion the following occurred (Id. at p. 1202):

"Mr. Ives. Is it the Senator's idea that machinery would be established under the control of the National Labor Relations Board to stop mass picketing?

"Mr. Ball. No, of course not.

"Mr. Ives. The Senator's idea is to have the police power of the Federal Government exercised?

"Mr. Ball. No. But I think that a mass picket line would be an unfair labor practice. We would not stop it, of course. The Senator knows that the process of filing an unfair labor practice charge and getting a hearing before the board would be a completely impractical way of dealing with a mass picket line. It might perhaps restrain unions in the use of the particular weapon, and I think that would be all to the good. It might discourage them a little, because it would be an unfair labor practice.

"Mr. Ives. They would be accused of an unfair labor practice, would they?

"Mr. Ball. Yes."

That the state law remedies that the Senators had in mind were not merely criminal penalties as appellant contends, was made clear in an exchange between Senators Morse and Taft (Id. at p. 1208):

"Mr. Morse. . . . I am of the opinion that experience will prove that even before a hearing, the filing of the petition itself, with certain allegations, will cause judges in some sections of the country at that point to interpret the law in such a way that it will serve as the foundation or bottom for an injunction.

"Mr. Taft. I agree with the Senator that if a case is filed alleging that the union threatens a man personally, or sends threatening letters to him, saying it is going to beat him and his family if he does not join the union, and the Board then finds that that was done, and issues a cease-and-desist order, it may be it would encourage a district attorney, or some of the local courts, to take unwarranted action. But in such a case the union ought to be punished. An injunction ought to be issued to prevent such a procedure.

"The Senator from Oregon a while ago said that the enactment of this proposed legislation will result in duplication of some of the state laws. It will duplicate some of the state laws only to the extent as I see it that actual violence is involved in the threat or in the operation.

"Mr. Morse: I believe with the Senator that that sort of action should be stopped. It should be stopped through state laws and not through a Federal law. The point I am seeking to make is that with this amendment on the statute books I think

it will be found that the very filing of the allegations will cause courts to proceed to issue injunctions. That is why I say I think it will be a tremendous handicap to legitimate strikes and legitimate organizational activities.

"Mr. Taft. The bill does not in any way change the right of the Federal court to issue an injunction. The Senator is suggesting that the enactment of this proposed legislation will bring about a condition which will compel the local court to do its duty. If that will be the result, I believe it will be a beneficial effect."

Summarizing this legislative history, it is fair to say, we believe, that it shows two things; first, that Congress intended merely to supplement existing state remedies against union violence and coercion, and to encourage their more vigorous enforcement; and second, that Congress recognized that the federal remedy incorporated into Sec. 8(b)(1) could not be expected to be effective against a particular episode of mass picketing. The primary purpose in adopting the federal remedy was to discourage future incidents of mass picketing by subjecting the Union to a cease and desist order.

Moreover, the legislative history is clear that Congress expressly foresaw that the States might elect to deal with mass picketing and other types of union violence and coercion by the use of the injunction. Indeed, even in the absence of this legislative history, such an expectation should be attributed to the Congress. For it seems apparent that criminal prosecution of what might be thousands of mass picketers is scarcely a practical remedy.

In Wisconsin it happens that the State provides a remedy combining the administrative process and the equitable powers of the State courts. We can admit that this remedy is not as efficient and speedy as direct application to the Courts for an injunction would be. But surely it cannot be argued that Congress intended to oust the states of power to afford a cumbersome remedy. Nor can appellant establish any perceptible right to insist that it should be proceeded against in only the most effective fashion.

We come then to the conclusion that in enacting Sec. 8(b)(1)(A) of the amended federal Act Congress intended merely to augment existing state remedies. While Congress unquestionably intended to preserve the right of the states to proceed against violence and coercion by criminal prosecution, it foresaw that the states would also utilize the injunctive process against union conduct of this type. Congress expressly encouraged the vigorous enforcement of these state remedies.

In this context it cannot be seriously contended that Wisconsin has somehow forfeited its power to regulate the conduct in question by adopting a remedy which postpones the exercise of the State's injunctive powers until an administrative proceeding has first demonstrated the need for injunctive relief. On the contrary, the admitted power of the State to furnish a more drastic remedy would seem to carry with it the power to furnish the less drastic one involved in this case.

IV. SINCE THE STATE AND FEDERAL REGULATION OF VIOLENT AND COERCIVE CONDUCT OCCURRING IN THE COURSE OF A LABOR DISPUTE IS APPLIED IN THE ENFORCEMENT OF DIFFERENT POLICIES AND REACHES THE CONDUCT UNDER DIFFERENT ASPECTS, BOTH MAY STAND DESPITE SOME DUPLICATION

Appellant takes the position that the legislative history of Sec. 8(b)(1)(A) shows only that Congress intended to preserve State criminal laws relating to violence and coercion. It argues that the legislative history "does *not* support the continued validity of state labor relations procedures entailing, as they would, a *third* remedy for the same conduct," (Appellant's Brief at p. 35). Thus, it rationalizes its contention, based primarily on *Garner* v. *Teamsters Union*, 346 U. S. 485, and *Weber* v. *Anheuser-Busch*, 348 U. S. 648, that the enactment of Sec. 8(b)(1)(A) of the amended federal Act has deprived the state of the power to proceed against union violence and coercion in the enforcement of the State's labor policy. (Appellant's Brief at p. 29).

While we believe that the legislative history is overwhelmingly against appellant on this question, we think it is worthwhile to point out that appellant's conclusion would be erroneous even if it did derive some support from the legislative history.

As we have previously noted, Wisconsin's regulation of the violent and coercive conduct here involved has been applied in the exercise of the State's power to protect the health, welfare and safety of its citizens against disorders arising out of labor disputes. The specific provisions of the Wisconsin Employment Peace Act applied by the State in this case have been so construed by the Wisconsin Supreme Court. *Allen-Bradley Local 1111* v. *Wisconsin Board*, 237 Wis. 164,

295 N. W. 791 (1941); *United Automobile Workers, CIO* v. *Wisconsin Board*, 269 Wis. 578, 70 N. W. 2d 191 (1955). This authoritative construction of state law is, of course, controlling on this Court.

Sec. 8(b)(1)(A) of the National Labor Relations Act, on the other hand, reaches the Union's conduct solely as a means of enforcing the guarantee of employee rights contained in Sec. 7 of that Act.

Thus, the State is proceeding against the conduct as an actual or threatened breach of the peace while the Federal Government treats it as an invasion of federally protected rights.

This Court has often recognized that the same act may offend against different state and federal policies. And where this has been the case it has permitted both the state and the federal prohibition to be applied. As was said by Mr. Justice Frankfurter, dissenting, in *California* v. *Zook*, 336 U. S. 725, 740:

> "Of course the same physical act may offend a State policy and another policy of the United States. Assaulting a United States Marshal would offend a State's policy against street brawls, but it may also be an obstruction to the administration of federal law. Scores of such instances, inevitable in a federal government, will readily suggest themselves. That was the kind of a situation presented by United States v. Marigold, 9 How (US) 560, 13 L. Ed. 257. Passing counterfeit currency may, in one aspect, be 'a *private cheat* practiced by one citizen of Ohio upon another,' and therefore invoke a State's concern in 'protecting her citizens against frauds,' 9 How (US) 568, 569, but the same passing becomes of vital concern to the Federal Government because it tends to debase the currency."

This principle is, we believe, recognized in *Rice* v. *Board of Trade*, 331 U. S. 247. There, regulatory authority of the Illinois Commerce Commission to review rules adopted by the Chicago Board of Trade was upheld despite the fact that the Board of Trade's rules were also subject to review by the Secretary of Agriculture acting pursuant to the federal Commodity Exchange Act. Disposing of the argument that there was potential conflict in the dual regulation, the Court said (331 U. S. at pp. 255-256):

> "Hence it seems to us that no action of the Illinois Commission within the zone where the Board has freedom to act would contravene the federal scheme of regulation. It would be quite a different matter if the Illinois Commission adopted rules for the Board which either violated the standards of the Act or collided with rules of the Secretary. But such collision is not necessary; and we cannot assume that the Illinois Commission will take any action which in any way impairs the federal regulatory scheme."

More directly in point is *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202, where the Minnesota Foreign Corporation Act was sustained against a claim of federal preemption. In *Union Brokerage* it appeared that the United States Treasury Department, acting pursuant to an Act of Congress, had issued detailed regulations governing the entry into, and the conduct of, the customhouse brokerage business. Union had qualifed as a broker under these regulations to do business in a District which included the State of Minnesota; it had not, however, qualified to do business in Minnesota under the State's Foreign Corporation Act. Pursuant to the provisions of the Foreign Corporation Act the State Courts had refused to entertain a

suit brought by Union solely on the ground of Union's failure to qualify as required by the state law. Before this Court it was urged that the Treasury Department regulations and the Act of Congress pursuant to which they were promulgated precluded the enforcement of the State's Foreign Corporation Act against Union.

In rejecting that contention the Court said (322 U. S., at p. 207):

> "... the limited and defined control which federal authority has thus far seen fit to assert over customhouse brokers does not deny to Minnesota the power to subject Union to the same demand which it makes of all other foreign corporations seeking the facilities of Minnesota's courts. The federal requirements and this state requirement can move freely within the orbits of their respective purposes without impinging upon one another. The federal regulations are concerned solely with the relations of the customhouse broker to the United States and to the importer and exporter. The limited federal supervision of the financial activities of Union is restricted to these federal interests. Such supervision does not touch the interest of the state in the protection of those who have other dealings with Union, and therefore does not preempt appropriate means for their protection.
>
> "In a situation like the present, where an enterprise touches different and not common interests between Nation and State, our task is that of harmonizing these interests without sacrificing either."

Here, as in *Union Brokerage*, the violent and coercive activity in which the unions and their members engaged, touched "different and not common" interests of the State and the federal government,—the

State's interest in the preservation of peace and good order and the prevention of street braws, and the federal government's interest in the effectuation of the guarantee of employee rights contained in Sec. 7 of the National Labor Relations Act. Under the rule of *Union Brokerage*, these dual interests should be harmonized without sacrificing either. And, at least in this case, the task of harmonizing these interests presents no serious problem for it is not even argued that the state regulation conflicts with the federal regulatory scheme.

California v. *Zook*, 336 U. S. 725, was a far less persuasive case for the preservation of dual regulation than the case at bar. Yet there, California's regulation of the transportation of passengers by motor vehicle was upheld despite the existence of the almost identical provisions of the federal Motor Carrier Act. The Court concluded that (336 U. S. at pp. 737-738):

> "'The state and federal regulations here applicable have their separate spheres of operation.' *Union Brokerage Co.* v. *Jensen*, *supra*, 322 U. S. at 208, 88 L. Ed. 1232, 64 S. Ct. 967, 152 ALR 1072. So far as casual, occasional, or reciprocal transportation of passengers for hire is concerned, the State may punish as it has in the present case for the safety and welfare of its inhabitants; the nation may punish for the safety and welfare of interstate commerce. There is no conflict."

Thus, in *Zook* both the state and the federal regulation were directed essentially at safety matters, while in the instant case the state and federal regulations reach the conduct in question under entirely different aspects. *A fortiori* the state regulation should be upheld in this case.

See, also, *Federal Compress & W. Co.* v. *McLean*, 291 U. S. 17.

Additional analogies can, of course, be drawn from criminal law. See, for example, *United States* v. *Marigold*, 9 How. (U.S.) 560; *United States* v. *Lanza*, 260 U. S. 377; *Hebert* v. *Louisiana*, 272 U. S. 312. Cf. *Southern R. Co.* v. *Railroad Commission*, 236 U. S. 439; *Jerome* v. *United States*, 318 U. S. 101.

We recognize that in *Weber* v. *Anheuser-Busch*, 348 U. S. 468, 479-480, this Court rejected an argument that state regulation should be upheld because applied in enforcement of the state's restraint of trade, rather than labor, policy. But the Court went on to point out that ". . . this case is not clearly one of 'unfair labor practices.'" In the instant case, while the unfair labor practices are not entirely clear because of the necessity of establishing union agency to show a violation of Sec. 8(b)(1)(A) of the NLRA, it is perfectly clear that the conduct is either unprotected by the federal Act, *Allen-Bradley Local 1111* v. *Wisconsin Board*, 315 U. S. 740, or is prohibited by it. Thus, none of the delicate questions concerning protected activity which were noted in the *Weber* case are present here.[6]

Moreover, the fact that it was a restraint of trade policy that the State sought to enforce in *Weber* seems to us to have significance. In many respects, all trade union conduct can be related to the general field of restraint of trade. Thus, a holding that the states could enforce their restraint of trade policies

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[6] We discuss this distinction further in our general treatment of *Weber* v. *Anheuser-Busch* and *Garner* v. *Teamsters Union*, 346 U. S. 485, infra, at pp. 40 to 43.

against labor union activity would have permitted the states effectively to nullify the rights assured to employees and their unions by the national labor policy.

Enforcement of a state's policy against breaches of the peace poses no such threat to the national policy. By its very nature such a state policy can have only limited applicability to the labor field, and its enforcement cannot result in the denial of rights assured by the federal government.

Accordingly, since the state and federal governments have touched the violent and coercive conduct here involved under different aspects, the dual regulation is permissible and the state's action should be sustained.

V. THE GARNER & WEBER DECISIONS DO NOT SUSTAIN APPELLANT'S CLAIM OF FEDERAL PREEMPTION IN THIS CASE

At the outset it should be noted that even appellant necessarily concedes that there has been no substantive preemption by Congress of the area of violent and coercive union conduct. The legislative history of Sec. 8(b)(1) of the amended National Labor Relations Act plainly makes such a concession unavoidable.[7] Appellant is thus driven back to a second line of defense. It maintains that Congress has "preempted" the remedial technique of dealing with such conduct by classifying it as an unfair labor practice and vesting jurisdiction over it in an administrative agency. To support this proposition appellant relies principally upon this Court's decisions in *Garner* v. *Teamsters Union*, 346 U. S. 485 and *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468.

[7] The Legislative History is discussed, *supra*, at pp. 26 to 33.

There are, however, at least two obvious and important distinctions between those two cases and the one at bar; a) *Garner* and *Anheuser-Busch* both involved union conduct over which Congress had exerted substantive preemption, and b) *Garner* and *Anheuser-Busch* both involved peaceful union conduct—not the violent and coercive tactics present in this case. Thus, though both cases on which appellant relies reach the conclusion that the remedy provided in the federal act is exclusive, neither can be said to stand for the principle for which appellant cites it,—namely, that the states may not afford a remedy paralleling a federal remedy with respect to non-peaceful conduct over which Congress has not exerted substantive preemption.

Moreover, it seems to us that there is a vast difference between exclusion of concurrent state regulation of peaceful union conduct in a labor dispute and exclusion of state regulation of violent conduct in similar circumstances.

Where a union takes peaceful,—though unlawful—economic action against an employer and his customers or suppliers, no immediate threat arises to the welfare of the community at large. The legislative judgment outlawing peaceful conduct of this type rests, not on the need for protecting the general community, but rather on the conclusion that it is desirable to confine the effect of a labor dispute to the immediate parties in interest—the primary employer and his employees. In such a case, it is reasonable to impute to the Congress a desire for uniformity in construction and administration of its legislation particularly in view of the care Congress has taken to insure that its remedy is prompt and effective by enacting Sec. 10(l)

of the Act—the so-called "mandatory injunction" provision.

Where, however, the unlawful union conduct involves mass violence and coercion an entirely different situation is presented. Conduct of this type does pose an immediate and serious threat to the entire community in which it occurs. It affects not only the participants to the dispute and those who have business relationships with them but literally every member of the community at large—no matter how remote from the economic area of the contest. In a word, there is precipitated a state of anarchy within the community.

In such circumstances we submit that it is unreasonable to impute to the Congress an intent to eliminate *any* remedy which offers some hope of restoring public peace and good order.

Here, at least, it would seem, Congress would be more concerned with the speed and effectiveness of the remedy than with the preservation of the technical niceties to be obtained through centralized construction and administration of the Act.

In this connection, it is essential to recognize also that many of the difficult technical problems inherent in cases involving allegedly unlawful, but peaceful, union conduct are not presented when the union is charged with violent and coercive conduct. Typically, in secondary boycott and jurisdictional strike situations involving only peaceful picketing the union defends not only on the ground that its conduct, if unlawful, falls within the exclusive regulatory power of the National Labor Relations Board but also on the affirmative ground that the conduct is protected by Sec. 7 of the amended federal act. See, for example,

Brief for the Petitioners in *Weber* v. *Anheuser-Busch* at p. 20 and *passim*; Brief for Respondents in *Garner* v. *Teamsters Union*, at p. 11 and *passim*. Often the dividing line between protected and unlawful conduct in such cases is far from clear, as this Court noted in *Weber* v. *Anheuser-Busch*, *supra*, 348 U. S. at p. 481. Hence, state intrusion into this area could very possibly be productive of conflict and confusion.

But these problems do not arise in cases involving violent and coercive union conduct, for normally in such cases it cannot be, and is not, contended that the conduct is protected—as an examination of appellant's brief in this case reveals. For this reason, it is fair to say, we believe, that insistence on exclusive federal jurisdiction in a case of this type is, in reality, no more than an attempt to defeat or delay substantial justice. In effect, appellant is contending for no more than the right to be enjoined by the federal, rather than a state, government. The only practical benefit that appellant can hope to achieve is the right to carry on its unlawful and terroristic conduct while the cumbersome processes of the NLRB are put into motion. We submit that, absent an overwhelming showing to the contrary, this Court should not impute to the Congress an intent to grant what would amount to a revocable license to terrorize a community,—an intent to "protect" mass violence and coercion until such time as the NLRB can conclude that the conduct is prohibited.

VI. THIS COURT, THE NATIONAL LABOR RELATIONS BOARD, AND VARIOUS STATE COURTS HAVE REPEATEDLY AFFIRMED THE POWER OF THE STATES TO REGULATE VIOLENT AND COERCIVE UNION CONDUCT SINCE THE ENACTMENT OF THE TAFT-HARTLEY ACT

Appellant admits that this case is almost identical factually with *Allen-Bradley Local 1111* v. *Wisconsin Board*, 315 U. S. 740, but attempts to distinguish *Allen-Bradley* on the ground that it was decided prior to the enactment of the Taft-Hartley Act.

We will not labor the fact that this Court has, on numerous occasions since the enactment of Taft-Hartley, cited *Allen-Bradley* for the proposition that the states still retain the right to regulate violent and coercive union conduct. See, for example, *Garner* v. *Teamsters Union*, 346 U. S. 485, 488; *International Union* v. *Wisconsin Board*, 336 U. S. 245, 253; *International Union* v. *O'Brien*, 339 U. S. 454, 459; *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 482. And see, *National Labor Relations Board* v. *International Rice Milling Co.*, 341 U. S. 665, 672, where the same principle is recognized without citation of *Allen-Bradley*.

We do, however, attribute special significance to the fact that in *Allen-Bradley* the violent and coercive union conduct had been reached through precisely the same administrative and judicial remedy as was invoked in this case. Thus, we read this Court's various approving references to *Allen-Bradley* since the enactment of the Taft-Hartley Act, not only as a recognition of the power of the states to deal with conduct of the type involved in the case at bar, but also as an express approval of the procedure followed in this case.

Moreover, the National Labor Relations Board has itself recognized the continuing authority of the States to regulate violent and coercive action arising out of a

labor dispute. Thus, in the brief submitted to this court by the NLRB as *amicus curiae* in *Weber* v. *Anheuser-Busch*, *supra*, the Board said (Brief at p. 14):

> "On the other hand, as this Court has pointed out, the text and history of the federal Act plainly contemplate certain areas subject to federal control in which the states are nonetheless free to act. Clearly within this category is the regulation of controversies or relationships which Congress has neither considered nor sought to regulate, but has left ungoverned. Thus, this Court held in *Auto Workers* v. *Wisconsin Board*, 336 U. S. 245, 264-265, that Wisconsin could regulate the conduct there involved because
>
> > 'recurrent or intermittent unannounced stoppage of work to win unstated ends was neither forbidden by federal statute nor was it legalized and approved thereby. Such being the case, the state police power was not superseded by congressional Act over a subject normally within its exclusive power and reachable by federal regulation only because of its effects on that interstate commerce which Congress may regulate.[8]"

"[8] This Court found additional support for its holding in the proposition that the federal Act empowered the Board to forbid a strike because its 'purpose' was illegal, but not because its 'method' was illegal (at pp. 253, 263). However, it may be noted that Section 8(b) (1) of the Act does empower the Board to forbid strike activity by labor organizations which restrains or coerces employees in the exercise of the rights guaranteed by Section 7 of the Act. See, for example, *International Rice Milling Co., Inc.* v. *National Labor Relations Board*, 341 U. S. 665, 672, n. 5; *United Construction Workers* v. *Laburnum Corp.*, 347 U. S. 656, 668-669; *National Labor Relations Board* v. *United Mine Workers*, 202 F. 2d 177 (C. A. 3), and cases cited; *National Maritime Union of America*, 78 NLRB 971, 982-986."

"Moreover, even in those areas where Congress has asserted its paramount authority, Congress has made it clear that in certain instances the states may act—for example, with respect to breaches of the peace (*Allen-Bradley Local* v. *Wisconsin Board*, 315 U. S. 740, or with respect to violations of state restrictions on 'union-security arrangements more rigid than those contained in the federal Act (*Algoma Plywood & Veneer Co.* v. *Wisconsin Board*, 336 U. S. 301), or where similarity of statute and interpretation would enable the National Board to cede jurisdiction to a state agency (Section 10(a) of the Act).

"The most recent pronouncement of this Court in the field of federal-state jurisdiction over labor controversies is *United Construction Workers* v. *Laburnum Corp.*, 347 U. S. 656. The nub of this decision is that the state may act where the essence of its action is not the regulation of labor relations matters which fall within the Congressional purview, but merely the protection of a legitimate state interest. *Laburnum*, however, in no way alters the principle established in *Garner* six months earlier, that a state may not 'impinge on the area of labor combat' which the federal authority 'designed to be free' (346 U. S., at 500). *Laburnum* held merely that the federal Act does not bar a state court from awarding damages in tort for violent activities of a labor organization which, although they constituted unfair labor practices under the federal Act, are also a common law tort. Support for this conclusion was found in the familiar principle that the Congressional intent in this regard was controlling. The Court stressed the legislative history of Section 8(b)

(1) (A) of the Act to the effect that federal regulation of violence in labor disputes should not preclude concurrent exercise of local police power over such violence merely because it occurred in a context of labor relations affecting interstate commerce (at pp. 668-669). *Cf. Allen-Bradley Local* v. *Wisconsin Board, supra.*"

The Board's position was even more clearly expresssed by then Chairman Herzog appearing before the Senate Committee on Labor and Public Welfare at the time of the 1953 hearings on proposed revisions of the Taft-Hartley Act. Mr. Herzog made the following statement (Hearings before Senate Committee on Labor and Public Welfare, 83d Cong., 1st Sess., Part 4, pp. 2123-2124):

"There are, of course, aspects of labor controversies which the States have traditionally been free to control. Although earlier witnesses have apparently sought to convey a contrary impression, the Labor-Management Relations Act of 1947 has not cut into that freedom. We speak of the inherent police power of each sovereign State to deal with acts of violence or other threats to the peace. The Supreme Court has emphasized this principle and recognized its continuing validity since the present Federal act, with its section 8 (b) (1) (A), went into effect. Approving certain action of the State of Wisconsin and rejecting the contention that the Federal statute superseded State authority, the Supreme Court said, in 1949:[18] 'while the Federal Board is empowered

"[18] UAW (AFL) v. Wisconsin Employment Relations Board (336 U. S. 245, 253). A convenient compilation of the cases on this general subject appears in the recent staff report of a subcommittee of this committee, entitled 'State Labor Injunction and Federal Law' (82d Cong., 2d sess.)."

to forbid a strike, when and because its purpose is one that the Federal act made illegal, it has been given no power to forbid one because its method is illegal—even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the States.'

"This is the law; no other decision of the Supreme Court has cast any doubt upon it. If some nevertheless believe it desirable for the Congress to underscore this principle by express enactment, we suggest that it can be done in more circumscribed and more specific terms than appear in S. 1161."

Significantly, as Chairman Herzog's statement shows, there was pending before the Senate Committee as of the time of the Chairman's statement, a bill (S. 1161) which would have conferred upon the States broad regulatory authority over all strikes and picketing. Thus the failure of the Congress to enact legislation partly at least on the strength of the statement of the Chairman of the NLRB indicates that Congress approved the Board's construction of the scope of State powers. See, *Alstate Construction Co.* v. *Durkin*, 345 U. S. 13, 17. It should be added that only recently the Board has stated that former Chairman Herzog's statement "continues to represent the Board's present views". See memorandum filed by the Solicitor General of The United States in *United Construction Workers* v. *Laburnum Construction Corp.*, *supra*.

Moreover, State courts have uniformly concluded that the States still retain the power to regulate violent and coercive action such as is here in issue. See,

for example, *Tallman Co.* v. *Latal*, 284 S. W. 2d 547, ... Mo. ..... (Supreme Court Mo., En Banc, 1955); *Williams* v. *Cedartown Textiles*, 68 S. E. 2d 705, 208 Ga. 659 (Ga. Supreme Court, 1952); *Perez* v. *Trifiletti*, 74 So. 2d 100, (Fla. Supreme Court, 1954) Certiorari denied, 348 U. S. 926; *Douglas Public Service Corp.* v. *Gaspard*, 74 So. 2d 182, 225 La. 972 (La. Supreme Court, 1954); *McQuay* v. *United Automobile Workers, CIO*, 72 N. W. 2d 81, ... Minn. ..... (Minn. Supreme Court, 1955) appeal filed, December 12, 1955, sub nom. *United Automobile Workers, CIO* v. *Anderson*, No. 565.

To us, the various statements of this court previously referred to, the briefs of the NLRB and the decisions of the State courts which we have cited, constitute an impressive body of judicial approval of State regulation of the type of conduct here in question. We have previously noted that this court has often said that the exercise by the States of their police powers will not be precluded unless the intention of Congress to reach that result has been clearly manifested. Now that the Taft-Hartley Act has been in effect for eight years and after numerous judicial interpretations which preserve State regulation of violent and coercive conduct, this appellant for the first time contends that the intention of Congress to exclude the States from this area has been clearly manifested. We submit, on the contrary, that had such an intention been present, it would have been discerned long ere this. The fact that such an intention has not been previously discovered is, we believe, convincing proof that no such intention in fact exists.

VII. SINCE THE STATES HAVE THE POWER TO REGULATE VIOLENT AND COERCIVE UNION CONDUCT THEY ARE FREE TO EMPLOY WHATEVER MEANS THEY SEE FIT TO MAKE THEIR REGULATION EFFECTIVE

We believe that this Court's decisions in *Algoma Plywood & Veneer Co.* v. *Wisconsin Board*, 336 U. S. 301, and *International Union* v. *Wisconsin Board*, 336 U. S. 245, (the "Briggs-Stratton" case), are dispositive of appellant's claim that the states may not proceed against violent and coercive union conduct as an "unfair labor practice."

In *Algoma* the State had held that the employer's discharge of an employee for failure to secure and maintain union membership under a union shop contract was an unfair labor practice under state law because the union shop had not been authorized by a vote among the members of the bargaining unit as the State law required. Before this Court it was urged by the employer that Sec. 10(a) of the Wagner Act, which made exclusive the power of the National Labor Relations Board to prevent the commission of unfair labor practices in interstate commerce, deprived the states of power to proceed against employers subject to the federal Act for the commission of acts declared to be unfair labor practices by state law. That argument was rejected by the Court in the following language (336 U. S. at p. 305):

> "The term 'unfair labor practice' is not a term of art having an independent significance which transcends its statutory definition. The States are free (apart from preemption by Congress) to characterize any wrong of any kind by an employer to an employee, whether statutorily created or known to the common law, as an 'unfair labor practice.'"

Similarly, in the *Briggs-Stratton* case the state law made the intermittent, unannounced, temporary work stoppages there involved an unfair labor practice. Again this Court upheld the right of the state to proceed in this fashion against that type of union conduct.

We recognize that there is a distinction between the instant case and *Algoma* and *Briggs-Stratton*, for in both the earlier cases the conduct involved was wholly unregulated by the federal Act while here a part of the conduct is expressly prohibited by that Act.

But for present purposes this is a distinction without a difference. *Algoma* and *Briggs-Stratton* both confirm the power of the states to proceed against unlawful conduct in the labor field as an "unfair labor practice" so long as the conduct in question is subject to state regulation.

VIII. THE FACTS OF THIS CASE DEMONSTRATE THE NEED FOR THE PRESERVATION OF BOTH STATE AND FEDERAL REMEDIES AGAINST VIOLENT AND COERCIVE CONDUCT

In its brief appellant makes extensive reference to an unfair labor practice proceeding currently being conducted before the National Labor Relations Board in which this appellee is the respondent. The references are intended to show that there may be a conflict between state and federal regulation both applied to the union conduct involved in this case.

We have noted, in our motion to dismiss, our objection to these references by appellant to matters that are not of record in this Court. (No part of the record before the National Labor Relations Board is included in the record here.) We now renew our objection to this practice. Appellant attempts to defend its conduct on the ground that (Appellant's Brief, p. 44, Footnote 15), ". . . the NLRB record is a public one

of which, we believe, we may properly advise this Court." No authority is cited by appellant for this novel proposition and we are aware of no rule which permits a Court to take judicial notice of the record in a case currently pending before another tribunal.

We submit that all references to matters dehors the record should be disregarded by this Court.

In any event, however, we disagree strongly with the conclusion that appellant reaches in regard to the possibility of state-federal conflict in this case.

We believe that the facts here demonstrate conclusively the need for preservation of both state and federal remedies lest a remedial hiatus develop which would leave both sovereigns helpless in the face of unlawful conduct which both condemn.

We have pointed out previously the inadequacies of the federal remedy and the fact that Congress expressly recognized certain of these inadequacies. Yet appellant would have state action stayed completely because some of the conduct involved *might* violate the federal Act.

Thus, the practical result of appellant's argument would be to deny to an employer—faced, as was this appellee, with a course of conduct which is plainly contrary to both state and federal policy—access to a single agency which has the power to prohibit all of the unlawful conduct in question. If appellant's argument should be accepted, an employer so situated would be required to proceed initially by filing charges with the National Labor Relations Board. Presumably, that Board would then hold a hearing and determine which of the various acts of misconduct charged constituted violations of Sec. 8(b)(1)(A) of the Na-

tional Labor Relations Act. Of course, no matter what determination the NLRB should make, the federal remedy could not be complete because the Federal Board is without power to protect anyone other than employees, and it can only protect them from restraint or coercion by unions and their agents.

But the fact that the federal remedy is necessarily inadequate could not avail to confer jurisdiction on the states. For there is no conceivable way in which the states can act in a case of this sort without incidentally protecting the rights assured to employees by Sec. 7 of the NLRA and simultaneously prohibiting conduct which may violate Sec. 8(b)(1)(A) of the federal Act.

To illustrate, the states could not prohibit mass picketing and the blocking of ingress to and egress from an employer's plant because an incidental but inevitable effect of such an order would be to protect the right of employees to enter and leave their place of employment—a right guaranteed by Sec. 7 of the NLRA.

Similarly, the states could not prohibit obstruction of streets and highways because obstruction of streets and highways might involve coercion of employees in the exercise of their federally protected rights. Nor could the states prohibit violence and coercion on the part of union members, for the union members *might* be acting as agents for the union.

Additional examples could be given, but enough has been said, we believe, to demonstrate that state action would be effectively paralyzed at least until proceedings before the NLRB had established the area of federal regulation and, inferentially, the area in which the state could act.

Hence, if appellant's argument is accepted the states would be prevented from acting to preserve law and order until the NLRB has determined the precise area in which state action is permissible,—and this despite the fact that the federal remedy which the NLRB is authorized to provide is plainly inadequate.

We can conceive of no circumstance which would more speedily bring the administration of justice into disrepute and hold the authority of government up to ridicule than this practical inability to cope with mass lawlessness.

We have noted at the outset of our brief the fact that the power and duty to preserve the peace is perhaps the most fundamental of the incidents of sovereignty. When that power is gone, sovereignty itself disappears. For the sovereign who cannot preserve the peace is palpably incapable of assuring those other rights of citizenship which necessarily assume for their recognition the pre-existence of an orderly society. Yet it is precisely this power which appellant would deny to the State of Wisconsin.

To us it is unthinkable that there should be attributed to the Congress that enacted the Taft-Hartley Act an intent to strike so severe a blow at the very foundations of state government. Surely such an intent, had it existed, would have been reflected clearly and fully in both the legislation itself and its history. Absent all evidence of such an intent, a construction of the Taft-Hartley Act effecting such a startling and momentous redistribution of state and federal powers should be avoided. See, *Palmer* v. *Massachusetts*, 308 U. S. 79, 85; *Allen-Bradley Local 1111* v. *Wisconsin Board*, 315 U. S. 740; *Kelly* v. *Washington*, 302 U. S. 1, 10.

CONCLUSION

For the reasons stated the judgment of the Supreme Court of Wisconsin should be affirmed.

Respectfully submitted,

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APPENDIX OF ORDERS OF THE NATIONAL LABOR RELATIONS BOARD IN TYPICAL CASES INVOLVING MASS VIOLENCE AND COERCION BY UNIONS AND THEIR AGENTS

Order in Cory Corporation, 84 NLRB 972 at Pages 979 to 981

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders the Respondent Local No. 1150, United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations; the Respondent United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations; and their officers, representatives, and agents, including the Respondents Pat Amato, Irving Krane, Lee Lundgren, Irene Berman, Faye Campbell, Virginia Charnota, May Mansfield, Leo Turner, Roy Spero, Virginia Kipta, Helen Nieminski, Frank Allen, and Alice Smith, shall:

1. Cease and desist from threatening employees of Cory Corporation, Chicago, Illinois, with loss of employment or other reprisals if they do not join Local No. 1150, United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations; from assaulting, attempting to assault, or threatening with reprisals the Company's employees if they refuse to support the Respondent Unions' strike at the Company's said plant; from engaging in picketing in such a manner as to bar employees from entering or leaving the plant; and from in any other manner restraining and coercing the Company's employees in the exercise of their right to self-organization, to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, as guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act, as amended:

(a) Post at the business offices of Local No. 1150, United Electrical, Radio & Machine Workers of America, C. I. O., and of United Electrical, Radio & Machine Workers of America, C. I. O., in Chicago, Illinois, copies of the notice attached hereto as an appendix. Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by an official representative of the Respondents Local No. 1150 and International, and individually by the Respondents Amato, Krane, Lundgren, Berman, Campbell, Charnota, Mansfield, Turner, Spero, Kipta, Nieminski, Allen, and Smith, be posted by the Respondents immediately upon receipt thereof, and maintained by them for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(b) Furnish to the Regional Director for the Thirteenth Region signed copies of the notice, attached hereto as an Appendix, for posting, the Company willing, on the bulletin boards of Cory Corporation where notices to employees are customarily posted. The notices shall be posted on the Company's bulletin boards and maintained thereon for a period of sixty (60) days thereafter. Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by the Respondents as provided in paragraph 2 (a) of this Order, be forthwith returned to the Regional Director for such posting;

(c) Notify the Regional Director for the Thirteenth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, as amended, be, and it hereby is, dismissed with respect to Bernard Lucas, Irving Gilbert, and John Bernard, and insofar as it alleges that the remaining Respondents violated Section 8 (b) (1) (A), except as found herein.

Order in Smith Cabinet Manufacturing Company, 81 NLRB 886 at Pages 892-893

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that United Furniture Workers of America, Local 309, CIO, and United Furniture Workers of America, CIO, and their officers, representatives, and agents, including Fred Fulford, John Quimby, Edgar Burger, Gerald Mays, Gene Smedley, Marjorie Gorman, Angeline Jackson, and Wincel Harmon, shall:

1. Cease and desist from restraining and coercing employees of Smith Cabinet Manufacturing Company, Inc., Salem, Indiana, in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, as guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post in conspicuous places in the business office of the Local in Salem, Indiana, and in the business office of the International in New York City, where notices to members are customarily posted, copies of the notice attached hereto as an Appendix. Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by official representatives of

the Local and the International, and individually by Fulford, Quimby, Burger, Mays, Smedley, Gorman, Jackson and Harmon, be posted by these Respondents immediately upon receipt thereof and maintained by them for a period of sixty (60) days thereafter. Reasonable steps shall be taken by these Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(b) Mail to the Regional Director for the Ninth Region signed copies of the notice attached hereto as an Appendix, for posting, the Company willing, on the bulletin board of Smith Cabinet Manufacturing Company, Inc., where notices to employees are customarily posted. The notice shall be posted on the Company's bulletin board and maintained thereon for a period of sixty (60) days thereafter. Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being signed as provided in paragraph 2 (a) of this Order, be forthwith returned to the Regional Director for said posting;

(c) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondents restrained and coerced employees by Burger's statements to Mirel Mount, and to the company officials.

Order in Local Union No. 6281, United Mine Workers of America. 100 NLRB 392 at Pages 395 to 396

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local Union No. 6281, United Mine Workers of America, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from:

(a) Restraining or coercing employees of Consolidation Coal Company, Kentucky Division of Pittsburgh Consolidation Coal Company, its successors or assigns, by threats of force or violence, or in any other manner, in the exercise of their rights guaranteed in Section 7 of the Act, including the right to refrain from engaging in such activities.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post at its business office and meeting hall, and in other conspicuous places, including all places where notices to members are customarily posted, copies of the notice attached hereto and marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by an official representative of the Respondent, be posted immediately upon receipt thereof and be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Director for the Ninth Region signed copies of the notice attached hereto and marked "Appendix A" for posting, the Company willing, in places where notices to employees of the Company employed in the vicinity of Jenkins, Kentucky, including employees at the Company's mines No. 207 and No. 214, are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being signed as provided in paragraph 2 (a) of this Order, be forthwith returned to the Regional Director for posting.

(c) Notify the Regional Director for the Ninth Region in writing within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

IT IS HEREBY FURTHER ORDERED, that except as otherwise found herein the complaint be, and it hereby is, dismissed.